

REMARKS

A. INTRODUCTION

Claims 185-189 and 192-201 are pending and rejected.

Upon entry of this Amendment:

- Claims 185-189 and 192-203 will be pending
- Claims 188, 189, and 201 will be amended
- Claims 202 and 203 will be added
- Claims 185, 192, 193, and 194 will be the only independent claims

B. TELEPHONE INTERVIEW

Applicants are grateful to the Examiner for the courtesy of a Telephone Interview held on December 6, 2007 with Applicants' representative. Although no formal agreement was reached, Applicants are grateful for the opportunity to discuss the Economist reference and the claimed step of *calculating a round-up amount* in independent Claim 185. Applicants stated that Economist does not disclose calculating any amount that is a difference between a round-up amount and a purchase price, nor would it be obvious to modify the system described in Economist to provide for such a feature. The Examiner did not necessarily agree, but suggested that Applicants provide such an argument in response to the Office Action.

C. AMENDMENT TO CLAIM 201

Claim 201 has been amended to correct an obvious error—"determines" is correctly replaced with *determining*. No new matter has been added.

D. SECTION 112 ¶ 2 REJECTION: INDEFINITENESS

Claims 188 and 189 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which we regard as the invention.

We respectfully traverse the Examiner's Section 112 ¶ 2 rejection of Claims 188 and 189. The Examiner did not establish a prima facie case that any language of Claims 188 or 189 is unreasonably unclear in light of the Specification from the viewpoint of one of ordinary skill in the art.

Each of Claims 188 and 189 has been amended, however, in order to clarify that in each claim the calculated lowest whole number that is greater than the purchase price (see Claim 187, from which each depends) is also a multiple of five or one, respectively. Accordingly, the Examiner's rejection is moot. Applicants

respectfully submit that each of Claims 188 and 189 is reasonably clear on its face and when considered in light of the Specification. Applicants respectfully request the Examiner reconsider and withdraw the Section 112 rejection of Claims 188 and 189.

E. SECTION 103(A) REJECTION

Claims 185-189 and 192-201 stand rejected under 35 U.S.C. 103(a) as being obvious in light of the Economist (“Heads I win, tails you lose”; Business, p. 74) and the Examiner’s Official Notice. We respectfully traverse the Examiner’s Section 103(a) rejection.

All of the Section 103(a) rejections rely on the Examiner’s assertion that Economist describes calculating a round-up amount that is a difference between a rounded price and a purchase price. As discussed during the Telephone Interview, Economist does not actually recite such subject matter. Specifically, there is no suggestion that the system described in Economist actually calculates a round-up amount that is a difference between a determined rounded price and a purchase price. As the Examiner notes in the Office Action, the only determination made in the described system is whether to round up or down to the nearest whole dollar. The actual amount rounded up or down is not described.

As discussed with the Examiner, the Economist also does not include any hint of the desirability of calculating a round-up amount. Accordingly, such a feature is not obvious. To the contrary, such a feature would be completely unnecessary and undesirable in the described system, as the system’s only purpose is to determine (randomly) what price the customer is to pay for the items the customer has presented for purchase. In contrast, determining the round-up amount in the claimed subject matter is useful, for example, as a prize for winning the recited lottery is proportional to the round-up amount. Economist does not suggest calculating a round-up amount that is a difference between the rounded price and the purchase price, much less suggest any use or purpose for such a calculated difference, much less that any round-up amount would have anything to do with any prize for winning a lottery.

For at least any of these reasons, the Office Action does not set forth a prima facie case of obviousness for any of rejected Claims 185-189 and 192-201. Applicants respectfully request the Examiner reconsider and withdraw the Section 103(a) rejection of Claims 185-189 and 192-201.

The Examiner acknowledges that the steps of *printing an entry in a lottery in which a prize for winning the lottery is proportional to the round-up amount and displaying an offer to exchange the round-up amount for an entry in a lottery in which a prize for winning the lottery is proportional to the round-up amount* are

not disclosed by Economist. Applicants respectfully disagree with the Examiner's assertion that these steps are either "non-functional descriptive material or in the alternative well known in the art." Printing an entry in a lottery and displaying an offer are not "non-functional." Further, the fact that the prize for winning the lottery (for which an entry is printed) is proportional to the calculated round-up amount demonstrates how the step of calculating is interrelated with the step of printing—a prize for winning the lottery explicitly is dependent on the calculated round-up amount. Applicants also respectfully dispute that the Examiner's example of three lottery ticket purchasers teaches or suggests a prize for a lottery that is proportional to a round-up amount that is a difference between a rounded price and a purchase price, as generally recited in each of independent Claims 185, 192, 193, and 194.

F. ADDITIONAL COMMENTS

Our silence with respect to the Examiner's other various assertions not explicitly addressed in this paper, including assertions of what the cited reference(s) teach or suggest, the Examiner's interpretation of claimed subject matter or the Specification, or the propriety of any asserted combination(s) of teachings, is not to be understood as agreement with the Examiner. As the Examiner has not established an un rebuttable prima facie case for rejecting any of the claims as pending, for at least the reasons stated in this paper, we need not address all of the Examiner's assertions at this time. Also, the absence of arguments for patentability other than those presented in this paper should not be construed as either a disclaimer of such arguments or as an indication that such arguments are not believed to be meritorious.

G. NEWLY-ADDED CLAIMS 202 AND 203 ARE PATENTABLE OVER THE CITED REFERENCES

Newly-added Claims 202 and 203 are patentable over Economist and for at least the reasons presented herein.

New Claim 202 depends from Claim 185. New Claim 203 depends from Claim 193. Each of the independent claims is discussed above. Further, nothing in Economist suggests exchanging an entry for a lottery for a calculated round-up amount that is a difference between a rounded price and a purchase price. In fact Economist **teaches away** from exchanging any additional item for a rounded price. As stated in Economist, a customer only receives the items for which the initial purchase price was determined in exchange for either a rounded up or rounded down price. According to Economist, the law of large numbers ensures an equitable result over time. Modifying the described system in order to provide for wherein a customer could exchange the difference between the purchase price and

the rounded price for an additional item (e.g., a lottery entry) would destroy this principle of operation of the described system by giving the customer too much in exchange for a rounded up price.

For at least the reasons stated herein, we respectfully submit that new Claims 202 and 203 contain allowable subject matter.

H. PETITION FOR EXTENSION OF TIME TO RESPOND & AUTHORIZATION TO CHARGE APPROPRIATE FEES

We do not believe that any fees are necessary for this response.

Please grant a petition for any extension of time required to make this Response timely. Please also charge any other appropriate fees set forth in 37 C.F.R. §§ 1.16 – 1.18 for this paper and for any accompanying papers to:

Deposit Account: 50-0271

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Please credit any overpayment to the same account.

I. CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's consideration is respectfully requested.

If the Examiner has any questions regarding this paper or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

Respectfully submitted,

December 10, 2007

Date

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